State, acting administratively, always seeks, before extending protection to American corporations abroad, to establish the fact that the substantial beneficial ownership of the company is vested in American stockholders.[17]

CONFLICT OF LAWS IN WORKMEN'S COMPENSATION LEGISLATION.

A recent Connecticut case involves problems in the conflict of laws that are at once of compelling theoretical interest and of great practical importance. An employee under a Massachusetts contract was injured in Connecticut while at work within the scope of his employment. Under the decision of the Supreme Judicial Court of Massachusetts in *Gould's Case*[1], in accordance with the court's conclusion as to legislative intent, the Workmen's Compensation Act of Massachusetts has no application to an injury occurring outside of that jurisdiction. In an action brought in Connecticut recovery was allowed under the statute of the latter state. *Douthwright v. Champlin* (1917) 91 Conn. 524; 100 Atl. 97.

Such a result would have been reached without difficulty under the authority of *Gould's Case, supra.* This case, mainly on considerations applicable to the law of torts generally, while deciding that the Massachusetts act did not apply to extraterritorial injuries, expressly stated that it did apply to all intraterritorial injuries irrespective of the place of the contract. The court gave full effect to the presumption that a legislative act designed partially to supersede a particular branch of the law of torts is coextensive in application with the law thus superseded.[2] The fact that this dominant purpose was effected by reading certain unexpressed terms into certain contracts of employment was deemed not to affect this presumption. The rule of conflict of laws applicable to torts generally,[3] and not that applicable to contracts, was therefore consistently applied.

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[17] Borchard, *op. cit.*, pp. 620-626.

[1] (1913) 215 Mass. 480, 102 N. E. 693. Accord, *Tomalin v. Pearson* [1909] 2 K. B. 61; *Schwartz v. India Rubber, etc. Co.* [1912] 2 K. B. 299. Applying the principle of *Gould's Case* to the question of waiver of common law rights are *Johnson v. Nelson* (1915) 128 Minn. 158, 150 N. W. 620; *Piatt v. Smith* (1915) 188 Mo. App. 584, 176 S. W. 434; *Pendar v. H. & B. Mach. Co.* (1913) 35 R. I. 321, 87 Atl. 1.

[2] *Gould's Case, supra,* 487.

[3] See cases cited in *Gould's Case,* 487; and compare the very important case of *Brown v. Western Union Tel. Co.* (1914) 234 U. S. 542, 547, 34 Sup. Ct. 955, 956.

Such, however, was not the reasoning of the principal case. It had previously been decided[4] that the Compensation Act of Connecticut was in effect an amendment of contract law, in its dominant characteristic a rule of construction applicable to a special class of contracts, whereby certain so-called "implied" terms were added. Accordingly the act was held to apply to all injuries wherever occurring, if arising under Connecticut contracts of employment, with the further intimation[5] that a similar application would be accorded to foreign acts in case of injuries occurring within Connecticut under foreign contracts. This, now probably the prevailing view among the states,[6] while recognized as law by the principal case, was refused application on the ground that the jurisdiction of the contract had, under *Gould's Case,* no applicable compensation act.[7]

We are not now concerned as between the two opposing theories of the workmen's compensation acts. The issue between them is merely one of degree. All rules of contract law, properly speaking, are ultimately concerned with the modification of certain conditions non-contractual in character. Conversely many rules of law, plainly within the domain of tort or quasi-contract law, obtain their compulsory fulfillment through the prohibition of certain terms in certain contracts. In no case is the mere regulation of the contractual relationship as such the sole and ultimate purpose of legislation.[8] In any case a regulation partaking of the nature of tort law *may* involve the incidental modification of the construction of certain contracts.[9] The decisive question should be, therefore: what is the dominant purpose of the statute,—to abolish certain unspecified evils arising from a certain way of contracting, the latter being the direct object of legislative attack, or to remedy certain factual conditions directly selected as the object of remedial legislation, with only an incidental effect upon contract law?

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[4] *Kennerson v. Thames Towboat Co.* (1915) 89 Conn. 367, 94 Atl. 372.

[5] *Ibid.,* 89 Conn. 381, 94 Atl. 378.

[6] *Post v. Burger* (1916) 216 N. Y. 544, 111 N. E. 351; *Schweitzer v. Hamburg-Amerikanische, etc. Co.* (1912, N. Y. Sup. Ct.) 78 Misc. (N. Y.) 448, 138 N. Y. Supp. 944; *Grinnell v. Wilkinson* (1916, R. I.) 98 Atl. 103; *Gooding v. Ott* (1916, W. Va.) 87 S. E. 862. See also Bradbury, *Workingmen's Compensation* (2d ed.) 56.

[7] See principal case, 91 Conn. 528-529, 100 Atl. 98.

[8] E. g., statutes of frauds, and regulations of life insurance contracts.

[9] E. g., regulations of hours of labor.

A graver practical question, however, is here involved. Can a court, consistently with the principles of conflict of laws, presume that an act combines both these characteristics simultaneously? Can it extend its own act to extraterritorial injuries occurring under contracts made within its own jurisdiction, and incorporate by reference foreign acts,[10] if applicable, as a part of the law of the contract in cases of intraterritorial injuries under foreign contracts, on the one hand, and, on the other hand, apply its own act to intraterritorial injuries under foreign contracts when the *lex contractus* has no applicable statute providing compensation, and also give effect to the law of the place of injury irrespective of the law of the contract in the matter of statutory waiver of common law rights of action? No conclusive theoretical objection to such a position exists, as the legislative intention may be deemed to have embraced both objects in equal degree. Such, indeed, has become the settled doctrine of at least one state.[11]

But the principles of conflict of laws are designed to provide a method of selection of specific rules universally applicable to specific groups of facts, without variation dependent upon the place where the remedy is sought.[12] The rule under present consideration must stand or fall according as it, if consistently followed, subserves this end; for, whatever the legislatures might have done by express enactment, they should not be presumed to have acted in contravention of the objects for which rules of conflict of laws exist.[13] We may assume any of the following

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[10] For the logical and legal bases of the conflict of laws, more particularly as regards "incorporation by reference," see Professor Wesley N. Hohfeld, *The Individual Liability of Stockholders and the Conflict of Laws* (1909) 9 COL. L. REV. 496, 520, 522, note, and 10 COL. L. REV. 526; see also Comment entitled *Moratorium Decrees and the Conflict of Laws* (1917) 26 YALE LAW JOURNAL, 771, 772.

[11] Except that the tort or quasi-contract aspect of the statute has been carried so far as to embrace intra-territorial injuries, even though the foreign *lex contractus* was an applicable statute. *Am. Radiator Co. v. Rogge* (1914) 86 N. J. L. 436, 92 Atl. 85, 93 Atl. 1083, 94 Atl. 85; *Rounsaville v. Central R. Co.* (1915, Sup. Ct.) 87 N. J. L. 371, 374; Atl. 392, 393 (applying the contract theory). Also compare *Pendar v. H. & B. Mach. Co., supra*, with *Grinnell v. Wilkinson, supra.*

[12] See Pillet, *Essai d'un systéme général de solution des conflicts des lois* (1894) 21 Clunet 417, 711; also Comment, *Moratorium Decrees and the Conflict of Laws* (1917) 26 YALE LAW JOURNAL, 771, 773.

[13] *In re Wood* (1902) 137 Cal. 129, 69 Pac. 900; *N. Y. Mut. Life Ins. Co. v. Prewitt* (1907) 127 Ky. 399, 105 S. W. 463.

alternative hypotheses, with respect to states X and Y. First, an injury occurs in state X under a Y contract of employment, the injury being of such a nature as to come within the terms of the X statute and not within the terms of the Y statute. Second, the injury comes within the terms of both statutes but with different scales of compensation. Third, state Y has no applicable workmen's compensation act. Fourth, under the law of state Y there has been no waiver of common law rights of action, while under the law of state X there has been such a waiver. Upon the fundamental assumption that the X statute is a branch of the contract law of state X, it necessarily follows that the failure to enact a similar statute in state Y is equally a characteristic of the contract law of the latter state. The absence of an applicable statute, therefore, and the provision of a different scale of compensation, and the rule resulting in no waiver of common law rights are as decisive features of the law of the contract as any positive applicable provision would be. To refuse to give effect to them, by swinging over to the tort theory of the local act, is in direct violation of the principles of international reciprocity applicable to contract law.

If it should be urged that such a policy is in accord with the well-settled rule[14] that the *lex contractus* will not be incorporated by reference when contrary to the declared public policy of the forum, two answers may be made. First, it has been decided,[15] and the result seems incontestable on principle, that contracts made under common law rules of industrial accident liability do not fall within such a classification. Second, the assumption of the existence of such a rule of policy established by the local statute is precisely the position which we contend to be incompatible with the simultaneous assumption that the legislation falls within the category of contract law. It is immaterial that a similar practical result is reached when, as sometimes unavoidably happens, different rules of conflict of laws obtain acceptance in different jurisdictions, or when different notions of public morals require a forum to repudiate a contract valid under the law of the contract. Our suggestions are directed to the fact that the court has in the present instance raised a gratuitous presumption of legislative intention intrinsically leading to this exceptional result.

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[14] *Greenwood v. Curtis* (1810) 6 Mass. 358.

[15] *Reynolds v. Day* (1914) 79 Wash. 499, 140 Pac. 681.

We have seen that a consistent application of the doctrine of the principal case has already produced an actual overlapping of the positive provisions of two compensation statutes.[16] Such a result has not yet been reached under the law of the principal case.[17] It would, however, logically follow from a refusal to recognize the negative features of the law of the contract on a point assumed to be one of contract law.

We submit, therefore, that the decision in the principal case should be reached under the reasoning of Gould's Case, *supra,* or not at all, and that the courts should decisively elect between the theory of that case and the contract theory of the workmen's compensation acts. If the latter prevails, the place of injury should in all cases be immaterial, whether or not the jurisdiction of the contract happens to possess an applicable statute.

C. R. W.

EXTRATERRITORIAL RECOGNITION OF A DECREE OF JUDICIAL SEPARATION

For the first time, apparently, a court has passed upon the extraterritorial effect, in a subsequent action for full divorce, of an *ex parte* judicial separation.[1] *Pettis v. Pettis* (1917) 91 Conn. 608, 101 Atl. 13. Immediately after marriage in New York the parties had separated; the wife remained resident there and obtained the decree in question. When the husband, who was domiciled throughout in Connecticut, began suit for divorce on grounds of desertion she pleaded the decree, which was based on cruelty, to justify her living apart. The court held that a decree of judicial separation, as opposed to full divorce, did not affect the marriage status, was personal in its nature, and to be in any way effective in another State, called for personal jurisdiction over the defendant.

If such a decree from bed and board is indeed personal merely, it cannot of course be enforced abroad against a non-appearing, non-resident party; nor can it be *res judicata* as to the grounds

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[16] See note 11, *supra.*

[17] See principal case, 91 Conn. 528, 100 Atl. 98.

[1] Where *both* parties have been before the court, the decree will bar subsequent suit by the original defendant for divorce on grounds of desertion; and is conclusive as to the issues of fact on which it is based. *Harding v .Harding* (1905) 198 U. S. 317, 25 Sup. Ct. R. 679.